IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION No. 9385 OF 1996

Date:01.02.2006

BETWEEN:

Andavarapu Neelakantam

…. PETITIONER

Vs.

1. The Divisional Forest Officer, Krishna Division, Vijayawada, and others.

…. RESPONDENTS

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION No. 9385 OF 1996

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ORDER:

When petitioner was transporting broom grass for sale in a lorry bearing No. AP 35 T 1314, the Divisional Forest Officer, Krishna Division, Vijayawada (first respondent) seized that lorry on the ground that the petitioner committed a forest offence. The case of the petitioner is that first respondent by putting the driver of his lorry under a threat, in spite of his producing documentary evidence to show that the broom grass being transported in the lorry was grown in private patta lands, and was not brought from the forest, directed him to pay Rs.25,000/- as compounding fees for release of the lorry and did not refund that

amount in spite of his representation.

2. Though the writ petition is filed in 1996 and an interim direction not to interfere with the petitioner transporting broom grass and sticks was passed on 26.04.1996 in W.P.M.P.No.11531 of 1996, by a learned Judge, while admitting the writ petition, no counter affidavit is filed by any of the respondents till day.

3. The contention of the learned counsel for the petitioner is that since the certificate issued by the Mandal Revenue Officer, Cheepurupalli, clearly shows that the petitioner has been purchasing uncleaned flower broom sticks from private patta lands of ryots and is exporting the same, petitioner cannot be said to have committed any forest offence for the first respondent collecting compounding fee and sopetitioner is entitled to refund of the compounding fee collected from his driver under threat. Relying on **Hakim & Co. v. Government of India** he contended that broom sticks are not forest produce. The contention of the learned Assistant Government Pleader is that since the petitioner did not avail the remedy of appeal open to him, this petition filed without availing the effective alternative remedy of appeal is not maintainable.

4. 'Forest produce', as defined in Section 2(g) of the A.P. Forest Act, 1967 (for short 'the Act'), has two limbs. The first limb relates to the produce, whether brought either from a forest or not, and the second limb relates to produce brought from a forest. Assuming that broom sticks fall within Section 2(8)(ii) of the Act, they would become 'forest produce' only if they are brought from a forest. Certificate issued by the Mandal Revenue Officer, filed along with the writ petition, shows that petitioner has been transporting the broom grass produced from private patta lands. Since no counter affidavit disputing the genuineness of the said certificate is filed by any of the respondents, it *prima facie*, has to be taken that the produce that was transported by the petitioner was collected from private patta lands, and so, *prima facie*, it does not become a forest produce, and so, first respondent colleting Rs.25,000/- towards compounding fee is highly arbitrary. No doubt petitioner does have the remedy of appeal. No purpose would be served by directing the petitioner to file an appeal at this stage about 10 years after he obtained an interim order and has been transporting the broom grass, and so petitioner can be granted the relief sought.

5. Hence, the Writ Petition is allowed. First respondents is directed to refund Rs.25,000/- to the petitioner, within one month from the date of receipt of this order. There shall be no order as to costs.

(C.Y. Somayajulu, J.)

1st February, 2006

js.